

ACDBE Goal-Setting (car rental)



**Federal Aviation
Administration**

Presented by: Dolores Leyva
DBE/ACDBE Compliance Specialist
Southwestern Region

7th Annual FAA Civil Rights Training
Conference for Airports

September 2016

Office Of Civil Rights

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THROUGH DIVERSITY*



Presentation Disclaimer

- This presentation uses paraphrasing of the Regulation
- Please reference the actual Regulation, 49 CFR 23, for verbatim text

Goal Setting and Implementation

- Purpose and Objectives of ACDBE
Overall Concession Goal and Program
Applicability
- Approaches to Calculate Goal
- Accountability Requirements

Purpose/Objectives

§23.1 What are the objectives of this part?

- Ensure nondiscrimination
- Create level playing field
- Ensure ACDBE program is narrowly tailored
- Ensure that only eligible firms participate as ACDBEs
- Remove barriers to the participation of ACDBEs
- Provide appropriate flexibility to airports in establishing and providing opportunities for ACDBEs

Objective of Car Rental Goal

§23.51(a)

Your objective in setting a goal is to estimate percentage of base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

Who is required to submit an Overall Goal?

§23.41 What is the basic overall goal requirement for recipients?

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal.

Base for Car Rental Goal

§ 23.51 (a)

- Estimate the percentage of the base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects
- Estimated participation if “level playing field” for firms to work as concessionaires
- Determine if firms in your market area have suffered discrimination with concession opportunities

How to Establish Car Rental Goal

§ 23.51 (b)

- Goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program
- Cannot rely on 10% national aspirational goal, your previous overall goal, or past ACDBE participation rates without reference to the relative availability of ACDBEs in your market

§23.51 How are a recipient's overall goals expressed and calculated?

§23.49

- Except in the case where you use the alternative goal approach of §23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

§23.51(c)(5)(ii)

In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

Determine Base of ACDBE Goal

Determine Your Objective

- 23.25(e)(1)(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a **direct ownership** arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

Determine Base of ACDBE Goal

Determine Your Objective

- 23.25(e)(1)(ii) If the goal applies to purchases and/or leases of **goods and services**, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

Direct Ownership Requirement

- §23.25 & §23.53

Cannot require car rental companies to change their corporate structure to provide for direct ownership arrangements.

What's Direct Ownership?

- Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm **owns** and **controls** a concession.

Market Area

§23.51 (b)(3)

- Geographical area in which substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

Steps to Calculating the Overall Goal

§23.51 How are a recipient's overall goals expressed and calculated? - continued

(c) **Step 1.** Begin goal setting process by determining base figure for relative availability of ACDBEs. Examples of approaches to take toward determining a base figure (not an exhaustive list):

- *Use DBE Directories and Census Bureau Data*
- *Use an Active Participants List*
- *Use data from a disparity study*
- *Use the goal of another recipient*
- *Alternative methods*

[Discussed in detail in later slides]

Steps to Calculating the Overall Goal

§23.51 How are a recipient's overall goals expressed and calculated? - continued

(d) *Step 2.* Once you have calculated base figure, examine all relevant evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at overall goal.

(1) Many types of evidence to be considered when adjusting base figure, including, but are not limited to:

(i) Current capacity of ACDBEs to perform work in your concessions program, as measured by volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.



Step 1

Approaches to Calculate the Car Rental Concessions ACDBE Goal

5 Approaches to Calculate the ACDBE Goal

1. ACDBE Directory + Census Data
2. Active Participants List
3. Disparity Study Data
4. Goal from another Recipient
5. Alternative Methods

Approaches to Calculate the ACDBE Goal

1. ACDBE Directory + Census Data

- *Determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes.*
- *Information about the CBP data base may be obtained from the Census Bureau at their Web site,
<http://www.census.gov/epcd/cbp/view/cbpview.html>*

$$\text{Relative Availability} = (\# \text{ of ACDBEs }) \div (\# \text{ of all businesses })$$

Approaches to Calculate the ACDBE Goal

2. Active Participants List

- *Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years.*
- *Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years.*

Relative Availability = (# of ACDBEs who have participated or attempted to participate) ÷ (# of all businesses)

Approaches to Calculate the ACDBE Goal

3. Disparity Study Data

Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.



Approaches to Calculate the DBE Goal

4. Goal from another Recipient

If another airport in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

Approaches to Calculate the DBE Goal

5. Alternative Methods

Methodology must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

Is it likely that all or most of the goal will be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs?

➡ Permissible Alternative – structure the goal entirely in terms of purchases of goods and services.

$$\text{Availability} = \frac{(\text{Estimated \$ value of purchases from ACDBEs})}{(\text{Estimated \$ value of all purchases to be made by car rental companies})}$$

Identify Method Selected

Be sure to identify which method you have selected to determine your base figure.



Step 2

Adjustment to Base Figure

Step 2 Adjustment: Things to Remember

- Do not mix/divide goods and services purchases by gross receipts
- Divide gross receipts by gross receipts or goods and services by goods and services

Apples to Apples and Oranges to Oranges!

- Continuing effects of past discrimination?
Must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought

Step 2

- Examine all relevant evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal
- You must consider:
 - Current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and
 - Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.
- If base figure is goal of another recipient, adjust it for differences in your market area and your concessions program

Step 2, cont'd.

- If available, consider evidence from related fields affecting opportunities for ACDBEs to form, grow and compete, including:
 - Statistical disparities in ability of ACDBEs to get financing, bonding and insurance required to participate in your program;
 - Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

Step 2, cont'd.

- If making adjustment to base figure to account for continuing effects of past discrimination, or effects of an ongoing ACDBE program, adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- Along with overall goal, include:
 - description of methodology used to establish goal, including base figure and calculation evidence
 - adjustments and evidence relied on for the adjustments
 - summary listing of relevant available evidence in your jurisdiction and explanation of how evidence was used to adjust base figure
 - projection of portions of overall goal expected to be met through R/N and R/C measures, respectively

Examples of What to Use for Step 2 Adjustment

Median Past ACDBE Participation (MPP)

- Use median ACDBE participation data from past 3 to 5 years to demonstrate capacity (percentages)
- If MPP figure is very similar to Step One base figure, you are not required to make adjustment for past participation

Step Two: Adjustment, cont'd.

Other Evidence

- Information from disparity studies
 - Lack of access to financing
 - Statistical employment data
 - Other data affecting likely ACDBE participation, e.g., drastic changes in the economy

What Information Should I Include? - cont'd.

- Amount of Goal

Discuss the proposed goal and identify the period. Note information you have excluded.

Example: Recipient's overall goal for car rental concessions during the period beginning October 1, 2011 and ending September 30, 2014 is 13.4%. The goal is expressed as a percentage of the total estimated value of purchases of goods and services for car rental concessions at the Airport. The overall goal is expected to remain at the current percentage level for each of the fiscal years during the three-year period.

Race-Neutral/Race-Conscious Breakdown

- Projection of Race-Neutral and Race-Conscious Participation
- Maximum Feasible Portion of Overall Goal using Race-Neutral Measures
 - ☐ Specify which race-neutral measures will be used
- **Must** Establish ACDBE Goals to Meet Remaining Portion of Goal

What Information Should I Include? - cont'd.

- Background

Provide a general overview of the airport and the concession opportunities

Example: Recipient is preparing to issue a Request for Proposal for ... It is anticipated that the # of contracts will be awarded for a term of X years. It is estimated that the car rental concessions will generate gross revenue in excess of \$ annually.

In accordance with the regulation regarding ACDBE participation in Airport Concessions, we have conducted research to determine an appropriate ACDBE goal for this opportunity.

Race-Conscious Measures

9th Circuit Recipients

AK, AZ, CA, HI, ID, MT, NV, OR, WA

Does not apply to ACDBE Program.



Western States Paving Co. v. Washington Dept. of Transportation, 407 F. 3d 983 (9th Cir. 2005)

Race-Conscious Measures

- Race-Conscious measures:
 - Concession-specific goals for particular concession opportunities
 - If intent is to get ACDBE participation through direct ownership arrangement with ACDBE, calculate goal as percentage of total estimated annual gross receipts from concession
 - If goal applies to purchases of goods and services, calculate goal by dividing estimated dollar value of such purchases from ACDBEs by total estimated dollar value of all purchases to be made by concessionaire

Race-Conscious Measures

- Race-Conscious measures, cont'd.:
 - Concession-specific goals for particular concession opportunities
 - Competitors must make GFE to meet goal (See Guidance)
 - Administrative procedures of contract goals in 49 CFR 26.51-53 apply

Goal Methodology Content?



What Information Should I Include with my Overall Goal Submittal?

Description of methodology used to establish goal including:

- base figure and evidence calculated
- adjustments made to base figure and evidence relied on for adjustments
- summary listing of relevant available evidence in jurisdiction, and explanation of how you used that evidence to adjust base figure
- projection of portions of overall goal you expect to meet through R/N and R/C, respectively

What Information Should I Include? - cont'd.

- **Goal Amount** - Discuss the proposed goal and identify the period. Note information you have excluded.

Example: Recipient's overall goal for car rental concessions during the period beginning October 1, 20XX and ending September 30, 20XX is XX.X%. The goal is expressed as a percentage of the total estimated value of purchases of goods and services for car rental concessions at the Airport. The overall goal is expected to remain at the current percentage level for each of the fiscal years during the three-year period.

What Information Should I Include? - cont'd.

- Background - Provide a general overview of the airport and the concession opportunities

Example: Recipient is preparing to issue a Request for Proposals for ... It is anticipated that the # of contracts will be awarded for a term of X years. It is estimated that the car rental concessions will generate gross revenue in excess of \$ annually. In accordance with the regulation regarding ACDBE participation in Airport Concessions, we have conducted research to determine an appropriate ACDBE goal for this opportunity.

What Information Should I Include? - cont'd.

- Disclose Existing car rental concessions, terms of contract, etc.

Example:

CONCESSION GOALS			
GOAL PERIOD: FROM 10/01/2011 to 9/30/2014			
Concessionaire	Concession	Contract Commencement Date	Contract Termination Date
Hertz	Rental Car A	12/15/00	06/30/12
Avis	Rental Car B	12/15/00	06/30/12
Vanguard Car Rental USA	Rental Car C	12/15/00	06/30/12
Budget	Rental Car D	12/15/00	06/30/12
Enterprise	Rental Car E	12/15/00	06/30/12
Thrifty	Rental Car F	02/04/03	06/30/12

What Information Should I Include? - cont'd.

- Market Area – Explain how the market area was identified? What sources did you use? How you determined the boundaries of the market area?

Example: Based on the types of goods/services purchased by the firms (e.g. auto repair, insurance, fuel, etc.), we have determined that the market area for the purchase of goods and services is (list cities/counties/parishes, etc.

Explain how you determined the boundaries of the market area.

What Information Should I Include? - cont'd.

- **Step 1 - What method did you use to determine the goal?**

Example: Given the fact that (state reason), we have elected to base the Car Rental ACDBE goal on the (explain selection).

The regulation provides for counting ACDBE participation for car rentals as follows: (§23.53)

What Information Should I Include? - cont'd.

- NAICS Code analysis: Make sure you are analyzing the correct NAICS codes.

Example: NAICS code analysis using California UCP (CUCP)

Census (2010) and CUCP Directory Data				
Trade	NAICS	Census	CUCP DBE Directory	% DBE
Insurance	524210	7,322	7	0.1%
Tire Dealers	441320	1,061	0	0.0%
Motor Vehicle Supplies/New Parts	423120	1,444	0	0.0%
Tire and Tube Wholesalers	423130	162	0	0.0%
Used Vehicle Parts	423140	159	0	0.0%
Wholesale Petroleum	423720	383	1	0.3%
Other Durable Goods	423990	1,226	8	0.7%
Auto Repair	811111	4,558	4	0.1%
Auto Body Repair	811121	2,076	1	0.0%
Auto Glass Repair	811122	271	0	0.0%
Auto Oil Change	811191	382	1	0.3%
Car Dealers	441110	976	0	0.0%
Total		19,044	23	0.1%

What Information Should I Include? - cont'd.

Example: NAICS code analysis...

2007 Economic Census Data								
Trade	NAICS	All Firms	Minority Owned	Minority Owned %	Woman Owned	Woman Owned %	Woman/Minority Owned	Woman/Minority Owned %
Insurance	524210	41,446	12559	30.3%	10313	24.9%	22872	55.2%
Tire Dealers	441320	1,336	488	36.5%	0	0.0%	488	36.5%
Motor Vehicle Supplies/New Parts	423120	1,862	559	30.0%	0	0.0%	559	30.0%
Tire and Tube Wholesalers	423130	180	23	12.8%	0	0.0%	23	12.8%
Used Vehicle Parts	423140	258	0	0.0%	0	0.0%	0	0.0%
Wholesale Petroleum	423720	343	66	19.2%	0	0.0%	66	19.2%
Other Durable Goods	423990	1,551	490	31.6%	168	10.8%	658	42.4%
Auto Repair	811111	9,400	3002	31.9%	422	4.5%	3424	36.4%
Auto Body Repair	811121	3,926	1410	35.9%	0	0.0%	1410	35.9%
Auto Glass Repair	811122	365	0	0.0%	0	0.0%	0	0.0%
Auto Oil Change	811191	411	0	0.0%	0	0.0%	0	0.0%
Car Dealers	441110	1,994	270	13.5%	249	12.5%	519	26.0%
Total		63,072	18,867	29.9%	11,152	17.7%	30,019	47.6%

What Information Should I Include? - cont'd.

Example: NAICS code analysis...

Methodology	Result	Comments
Directory/Census	.1%	Directory data is not comprehensive. Census data is over-inclusive, containing all firms operating in the NAICS code, not necessarily ready, willing and able to perform the contract.
Economic Census	29.8%	Duplication of minority- and woman-owned firms in data. Unknown how many of the minority- woman-owned firms are certifiable as ACDBEs.
Active Participants List	N/A	Data collected from car rental firms includes firms who are not certified and does not include non-ACDBE firms.
Disparity Studies	N/A	No disparity studies that include the applicable trades have been identified for the relevant geographic region.

What Information Should I Include? - cont'd.

- Narrative portion should clearly discuss your calculations, assumptions, regulation references and requirements, etc.
- Remember to always show your work!



Race-Neutral/Race-Conscious Breakdown

- Projection of Race-Neutral and Race-Conscious Participation
- Maximum Feasible Portion of Overall Goal using Race-Neutral Measures
 - ☐ Specify which race-neutral measures will be used
- **Must** Establish ACDBE Goals to Meet Remaining Portion of Goal

Race-Neutral Measures

1. Locate and identify ACDBEs and other small businesses who may want to participate as concessionaires
2. Notify ACDBEs of concession opportunities and encourage them to compete, when appropriate
3. Structure concession activities to as to encourage and facilitate ACDBE participation
4. Provide technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing

Race-Neutral Measures

5. Ensure competitors for opportunities are informed during pre-solicitation meetings about how ACDBE program will affect procurement process
6. Provide info to competitors concerning availability of ACDBE firms to assist them in obtaining ACDBE participation
7. Establish a business development program, technical assistance program or other steps to foster ACDBE participation in concessions

Race-Conscious Measures

9th Circuit Recipients

AK, AZ, CA, HI, ID, MT, NV, OR, WA

Does not apply to ACDBE Program.

*Western States Paving Co. v.
Washington Dept. of Transportation,
407 F. 3d 983 (9th Cir. 2005)*

Consultation

Small Business Community and Stakeholder Engagement – **Requirement!** (§23.43)

- Minority organizations; women's groups; community organizations; trade associations representing concessionaires; existing concessionaires; other officials or organizations who might have info concerning availability of disadvantaged businesses, effects of discrimination on opportunities for ACDBEs, and your efforts to increase participation
- Publishing requirement does not apply to concessions

When is My Goal Due?

49 CFR Part 23

Primary Airports -- 3-Year Overall ACDBE Goals

DUE: OCTOBER 1

Airport Size	Region	Due	Period Covered	Next Goal Due
Non-Hubs	All	2013	2014/2015/2016	2016 (2017/2018/2019)
Large/Medium Hubs	All	2014	2015/2016/2017	2017 (2018/2019/2020)
Small Hubs	All	2015	2016/2017/2018	2018 (2019/2020/2021)

ACDBE – Submittal Process

- No requirement to obtain prior FAA concurrence with overall goal
- If FAA's review suggests overall goal has not been correctly calculated, or that method for calculating goals is inadequate, FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

ACDBE – Submittal Process

- Need additional time?
 - Request approval of FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:
 1. Reflect relative availability of ACDBEs in your market area to maximum extent feasible given the data available to you; and
 2. Avoid imposing undue burdens on non-ACDBEs



Accountability Report (Shortfall Requirements)

- A recipient that does not meet its overall DBE or ACDBE goal **in any given year** must prepare a written analysis to the FAA of **why the goal was not met** and **corrective measures** to be taken.
- Analyze reasons for difference between overall goal and awards/commitments in that year
- Establish specific steps to correct problems in order to fully meet goal for new fiscal year
- Timeframe: Regulation Requirement...

Accountability Report (Shortfall Requirements)

- **Core 30 Airports**
 - Submit reports for approval
- **All Other Airports**
 - Do not have to submit to FAA. Must maintain records for three years and make available to FAA, upon request

ACDBE Shortfall Submission Dates: What If...

Your FY 2015-2017 is 8% Goal

FY 2015: Achieved 8% ACDBE Participation =
No Shortfall Submission Required

FY 2016: Achieved 7.8% ACDBE Participation
= **Shortfall Submission Required**

FY 2017: Achieved 9% ACDBE Participation =
No Shortfall Submission Required

Drafting a Shortfall Analysis:

- ☐ Shortfall Percentage
- ☐ Race-Conscious/Race-Neutral Breakdown
- ☐ Race-Neutral Measures
- ☐ Concessions undertaken during the FY
- ☐ ACDBE participation on these projects
- ☐ **Reasons for the Shortfall**



Drafting a Corrective Action Plan: Elements

- ☐ **Specific Steps to Achieve Goal in Upcoming Fiscal Year**
- ☐ **Milestones for Implementing these Steps**



Accountability Report (Shortfall Requirements)

Recipient is in non-compliance if **ANY** of the following occur:

- Does not submit analysis and corrective actions to FAA timely
- FAA disapproves of analysis or corrective actions
- Does not fully implement corrective actions or FAA's imposed conditions for acceptance

Q & A

Federal Aviation Administration-Office of Civil Rights

http://www.faa.gov/about/office_org/headquarters_offices/acr/